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10/797,284	03/10/2004	David Kirchhoff	03968-P0001C	2939
24126	7590	03/06/2009	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			RIVIERE, HEIDI M	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: DAVID KIRCHHOFF, LISA CONNELLY, ANNA CROOK,
SHEILA KELLY, KAREN MILLER-KOVACH, AMIE PERL,
PALMA POSILLICO, THILO SEMMELBAUER, and AMY SHEPPARD

Application No. 10/797,284
Technology Center 3600

Mailed: 6 March 2009

Before LAWRENCE J. BANKS *Paralegal Specialist*
BANKS, *Paralegal Specialist.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on 16 December 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed 20 June 2008 under the heading “Grounds of rejection to be reviewed on appeal” is unclear and/or is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the last Office action, including any mailed Advisory Action(s) finds that claim 17 is rejected under 35 U.S.C. § 103(a) Mault et al (2002/0027164 A1) in view of Jill Barker, “There’s a gym on the Job: St. Mary’s Hospital Offers Full-Service Facility for the Use of its Harried Staff”, The Gazette, March 28, 2000 and claim 51 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mault-164 in view of Applicants Own Admission; whereas Appellant(s) did not indicated the grounds of rejection of these claims. Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

EXAMINER’S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER’S ANSWER. The examiner’s answer is required to include,

under appropriate headings, in the order indicated, the following items:

....

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed 3 September 2008 is deficient because the "Evidence Relied Upon" section fails to include the reference(s) Mault (2002/0062069 A1) cited on page(s) 17-22 in the Examiner's Answer's grounds of rejection of claims 6, 35, 37, 43, 46-47, 52, 55-56, 58, 72-73, and 75 rejected under 35 USC § 103(a).

Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed on 20 June 2008 defective;
- 2) notify Appellant to file a paper properly addressing the Grounds of rejection of all claims;
- 3) issue a PTO-90 citing the missing reference listed under the Evidence Relied Upon section, paragraph (8); and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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